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In re Application of :
Ellsworth, et al. : **DECISION ON PETITION**
U.S. Application No. 10/019,680 : **UNDER 37 CFR 1.78(a)(6)**
PCT No.: PCT/US01/11732 :
Int. Filing Date: 27 April 2001 :
Priority Date: 28 April 2000 :
Attorney Docket No. 70869-0074US :
For: BLOOD COMPONENT SEPARATOR DISK :

This decision is in response to "Amendment Pursuant to 37 CFR 1.312 and Petition to For Acceptance of Claim of Priority" which is being treated as a petition under 37 CFR § 1.78(a)(6), filed July 22, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR § 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

The petition was accompanied by an amendment to the first sentence of the specification following the title to include a reference to the prior-filed applications.

This nonprovisional application was filed on 17 April 2001, and was pending at the time of filing of this petition. While a reference to the prior-filed provisional application was not included in an Application Data Sheet (ADS) or in the first sentence of the specification following the title, reference nevertheless was made in the National Stage papers (see WIPO publication) of the above-identified application PCT.

The current procedure where a claim for priority under 37 CFR § 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear in the national stage application papers within the time period under 37 CFR 1.78(a)(5)(ii) and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning

§1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s), a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(6).¹ In the instant case, the Office noted the claim for priority of the prior-filed application as shown by its inclusion on the filing receipt.

In view of the above, the \$1370 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Anthony Smith at (571) 272-3298. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to the Examiner of Technology Center AU 1723 for appropriate action on the amendment under 37 CFR 1.312 filed July 22, 2005.



Boris Milef
Legal Examiner
Office of Petitions and PCT Legal Administration

¹ Note MPEP 201.11 (III)(D) , pages 200-59 and 200-60 (Rev. 2. May 2004) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.